



## Policy 724

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<b>PERFORMANCE REVIEW BOARD</b>	
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*By Order of the Police Commissioner*

### POLICY

As a professional law enforcement organization, the Baltimore Police Department (BPD) must continuously engage in a process of self-examination. To that end, a timely and detailed performance review shall follow when certain significant events occur.

**While members must at all times comply with the minimum legal requirements governing the use of force, they must also comply with even stricter standards set forth by Department policy.**

### CORE PRINCIPLES

**Self-Assessment and Performance Improvement.** The overarching purpose of the Performance Review Board (PRB) is to learn from critical incidents and apply those lessons towards improving the Department. The scope of the PRB analysis shall include all areas of the Department, namely: departmental policy, training, tactics, equipment, supervision, and technology. The PRB shall critically review and candidly discuss incidents with the goal of identifying Action Items that would improve performance and/or safety.

**Timely Review.** The PRB shall analyze Reviewable Incidents in a timely manner, understanding that some investigative information such as statements from involved members may not be available, but that certain information, such as video evidence and witness statements, will be available and should be evaluated. By promptly reviewing incidents, the PRB can address departmental deficiencies on a more expedient schedule; critical reforms related to safety and performance should not wait for an investigation to conclude.

**Recognition of Exemplary Conduct.** The Performance Review Board will not only identify areas for performance improvement but also recognize exemplary performance by members in Reviewable Incidents as appropriate.

### DEFINITIONS

**Action Items** — Recommendations to the Police Commissioner to consider the review of policies, training, supervision, tactics, and equipment identified during the PRB process. The Chair of the PRB is obligated to ensure a referral to Public Integrity Bureau (PIB) if potential misconduct is discovered in the review process. The referral may be made by any member of the PRB, even if the PRB as a whole does not make the referral.

**Level 2 Use of Force** — Includes:

- Force that causes or could reasonably be expected to cause an injury greater than temporary pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a conducted electricity weapon (CEW) in drive-stun or probes deployment, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of oleoresin capsicum (OC) spray or other chemical agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes, open hand strikes, and kicks,
- Discharge of a less-lethal launcher/munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area, and
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

**Level 3 Use of Force** — Includes:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges,
- Applications of more than three (3) CEW cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,
- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,
- Uses of force resulting in death, serious physical injury, loss of consciousness, or requiring hospitalization, and
- Uses of deadly force/lethal force.

**NOTE:** Hospitalization refers to admission to the hospital, and does not include treatment and release in the emergency department, no matter how long the stay.

**Reviewable Incidents** — The types of incidents which the Performance Review Board shall review, including:

- All Level 3 Use of Force incidents and other incidents investigated by Special Investigations Response Team (SIRT) (See Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team*),
- Any other incident or investigation at the request of the Police Commissioner or their designee.

**GENERAL**

1. The PRB shall serve as an advisory body to the Police Commissioner that conducts timely, comprehensive, and reliable evaluations of Reviewable Incidents.
2. The PRB will not make recommendations concerning discipline; however, the Chairperson must refer any potential misconduct to PIB for follow-up investigation. The Chairperson shall state whether a referral is occurring prior to the conclusion of the meeting after providing an opportunity for input from Voting and Non-Voting Members. If the Chairperson decides not to refer potential misconduct to PIB but another member of the PRB believes potential misconduct occurred, that member shall refer the potential misconduct to PIB.

3. The PRB shall, within 14 days of the review, provide a memorandum of Action Items to the Police Commissioner that includes:
  - 3.1. A synopsis of the observations of the PRB's Voting Members and Non-Voting Participants as to the circumstances of the Reviewable Incident,
  - 3.2. An identification of the areas of needed improvement in the performance of the involved member(s), including the performance of their supervisors during the incident, and the BPD as a whole,
  - 3.3. An identification of the areas of exemplary performance of the involved members, and any steps the Board intends to take to recognize those members, formally or informally,
  - 3.4. Recommended improvements to BPD policies, training, supervision, tactics, and equipment identified during the review.
4. The PRB shall ensure timely consideration and, as appropriate, implementation of the Board's Action Items. Each PRB meeting shall begin with a brief status update from members to whom consideration and/or implementation of Action Items was assigned at a previous PRB.
5. Where additional investigation is necessary to reach administrative findings, the PRB will refer the incident to the PIB's Special Investigation Response Team (SIRT) Unit.

## **DIRECTIVES**

### **Voting Members of the PRB**

6. The three voting members of the PRB shall be:
  - 6.1. Deputy Commissioner, Compliance Bureau, or designee
  - 6.2. Lieutenant Colonel or above, Operations Bureau, as determined by the Deputy Commissioner of the Operations Bureau,
  - 6.3. Deputy Commissioner, Public Integrity Bureau, or designee
7. The Chairperson shall be the Deputy Commissioner of Compliance or designee.

### **Non-Voting Participants**

The following individuals, or their designee, shall attend and participate in the PRB, if deemed necessary by the voting members:

8. Chief, Legal Affairs.
9. Commander, Use of Force Assessment Unit.
10. Commander, SWAT.
11. Director, Consent Decree Implementation Unit.

12. Commander, Education and Training.
13. Commander, Health and Wellness.
14. Any other unit whose attendance is deemed necessary by the voting members.

### Presentation

15. The PRB shall receive a case presentation from the SIRT Lead Investigator or other appropriate BPD investigative unit within 30 days of the Reviewable Incident, or as soon as possible thereafter.
16. The intent of the presentation shall be to objectively demonstrate, in chronological order, the events leading up to, during, and immediately after the incident. The SIRT presentation shall not include the criminal history or previous law enforcement encounters of any involved citizens **unless** such context is specifically relevant to the case.
17. The presentation shall include all relevant evidence including, but not limited to:
  - 17.1. Photos,
  - 17.2. Videos, including body-worn camera recordings,
  - 17.3. Audio recordings,
  - 17.4. Diagrams, and
  - 17.5. Other evidence developed during the investigation of the incident under review. The Voting Members of the PRB retain the authority to request additional information from SIRT investigators to aid their recommendations.

### PRB Review

18. The SIRT Lead Investigator, or other appropriate BPD investigative unit, shall present the case detailing the facts and circumstances of the Reviewable Incident.
19. The PRB shall ask questions of the SIRT Lead Investigator regarding the Reviewable Incident to establish a comprehensive understanding of the available facts and circumstances of the Reviewable Incident.
20. The PRB shall discuss and evaluate the Reviewable Incident critically to identify opportunities for organizational and individual improvement, as well as whether the actions were potentially inconsistent with policy or training. This review shall specifically address:
  - 20.1. **Initiation of event and initial contact:** Whether initiation of the event, including 911 call intake, handling by dispatch, and the initial and continuing police contact by the involved member(s) was conducted in a manner that was constitutional and consistent with departmental policy and priorities.

- 20.2. **Consistency with Use of Force Policy and Training:** Whether the member's use of force was reasonable, necessary, and proportional based on the totality of the circumstances and otherwise consistent with Department policy and training.
  - 20.3. **De-escalation:** Whether the member or another member attempted to de-escalate the incident in order to avoid the need to use force, reduce the level of force, or whether the actions of the officer escalated the incident so that a higher force level became necessary to resolve the situation.
  - 20.4. **Tactics:** Whether alternative tactical decisions could have allowed the member to resolve the incident more safely for the subject or the member, without the need to use force, or with lesser force.
  - 20.5. **Post-Incident Response:** Whether issues with rendering of aid or on-scene supervision, amongst other potential issues, occurred.
  - 20.6. **Supervisor Investigation(s):** Where applicable, whether each supervisor within a member's chain of command completed a thorough, accurate, and timely review, including corrective action, recommendations, or referral to PIB.
  - 20.7. **SIRT Investigation:** Whether the SIRT investigation of the incident was thorough and consistent with policy.
  - 20.8. **Recommendations:** Whether any improvements are needed for Departmental policy, training, tactics, supervision, organizational structure, equipment, or SIRT investigations. The recommendations must articulate a specific follow-up action. Recommendations may require further consideration of a given topic outside of PRB to determine the appropriate course of action.
21. At the conclusion of the discussion, the PRB shall compile a list of recommendations for the Police Commissioner to determine appropriate Action Items.
    - 21.1. The voting members of the PRB shall vote on whether to forward its list of recommendations to the Police Commissioner.
    - 21.2. If the PRB does not come to a unanimous agreement, any voting member who does not join the majority decision must prepare a separate memorandum stating the member's position and recommendations. This memorandum must be completed and attached to the PRB memorandum to the Police Commissioner detailed below.

### Submission and Implementation of Recommendations

22. Within 14 days of the PRB presentation, unless the PRB Chair grants an extension, the PRB Chair shall submit a memorandum to the Police Commissioner outlining the findings and recommendations of the PRB.
23. The PRB memorandum shall include the following Action Items, as applicable:
  - 23.1. Policy Update: Recommendations from the PRB on any policy improvements that may provide better or clearer guidance to members.

- 23.2. Training and Tactical Improvement: Observations of the tactics employed by BPD members, including de-escalation, and how the incident may provide an opportunity to improve BPD training. PRB members should also recommend specific supplemental or remedial training for the members involved in the incident under review, and/or for BPD as a whole, as appropriate.
- 23.3. Equipment/Technology: Recommendation from the PRB on any equipment, including technology, which may have improved the outcome of the incident under review and should be evaluated for future use.
- 23.4. Organizational: Any issues observed relating to the structure and function of BPD supervision, command, and control.
- 23.5. Other Critical Analysis: Any other issues observed that could improve future performance of the member(s) involved, other members, or the BPD as a whole. This includes tactical decisions and other circumstances/considerations leading up to the incident.
- 23.6. Investigation: Recommendations from the PRB regarding necessary actions the investigator must take to conduct a comprehensive investigation.
- 23.7. Referral for Potential Misconduct:
- 23.7.1. The Chairperson shall not make recommendations concerning discipline, but shall ensure a referral to PIB if potential misconduct is discovered in the review process.
- 23.7.2. If the investigation is complete and a member notes that the SIRT Lead Investigator failed to report police misconduct, they shall report the Investigator to PIB for failing to report the misconduct.
24. In addition to the memorandum, the voting members of the PRB may request that the Performance Standards Section conduct a performance review of an identified area of concern.
25. The Police Commissioner shall make the final decision on whether or not to adopt the PRB's Action Items.
26. The Chairperson shall track the outcome of all Action Items, including the reasons for any rejections, and ensure the appropriate resolution of all approved Action Items. The Chairperson shall ensure that the PRB's findings and approved Action Items are brought to the attention of the relevant Commanding Officer for appropriate action. The Chairperson shall require a status report on outstanding recommendations at the beginning of PRB meetings.

### Review of Level 2 Uses of Force

27. On a quarterly basis, the Chairperson shall convene a group to review a random sample of 10% of Level 2 use of force investigations completed during the previous quarter. The Chairperson shall select at least two other members of the PRB to participate in these reviews. The participating members shall conduct the review by discussing and evaluating the relevant items listed in 21 above.

28. The Commander of the Use of Force Assessment Unit shall present the cases under review.
29. The Chairperson shall compile a brief overview memo documenting the quarterly review, listing any specific Action Items in detail, for the Police Commissioner's approval and appropriate follow-up action.

### **REQUIRED ACTION**

#### **Training for Voting Members**

30. The voting members shall receive a minimum of eight hours of training annually, to include legal updates regarding the use of force and E&T's current training curriculum on the use of force.

#### **Manual for PRB**

31. The PRB will develop and implement standard operating procedures to govern its operations.

### **ASSOCIATED POLICIES**

Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)*  
Policy 725, *Use of Force Reporting, Review, and Assessment*  
Policy 1115, *Use of Force*

### **RESCISSION**

Remove and destroy/recycle Policy 724, *Performance Review Board*, dated 1 August 2016.

### **COMMUNICATION OF POLICY**

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.